

REMARKS

In an Office Action dated July 14, 2005, the Examiner rejects Claims 1, 3, 5-9, 11, and 13-14 (All pending claims). Applicant amends claims 1, 5-7, 9, 11, and 13-14 and Applicant respectfully traverses the rejections. Claims 1, 3, 5-9, 11, and 13-14 remain in the application. In light of the following the amendments and following arguments, Applicant respectfully requests that this application be allowed.

Applicant has amended claim 1, 5, 7, 9 and 13 to recite that checkpointing data stored in the checkpoint server consists of connection data and does not include message data. This is to better define the claimed invention. The Applicant also respectively traverses the Examiner's rejection.

The Examiner rejects claim 1 under 35 U. S.C. §102 as being anticipated by U.S. Patent Number 5,907,678 issued to Housel, III et al. (Housel). To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Bariant, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, 1768 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements "arranged as in the claim." *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). The **test for anticipation** is symmetrical to the test for infringement and has been stated as: "That which would literally infringe [a claim] if later in time anticipates if earlier than the date of invention." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. 1931, 1938 (Fed. Cir. 1983). **Missing elements** may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985). In order to support an anticipation rejection based on **inherency**, an Examiner must provide factual and technical grounds establishing that the inherent feature necessarily flows from the teachings of the prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int. 1990); *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323,

326 (C.C.P.A. 1981) (holding that inherency must flow as a necessary conclusion from the prior art, not simply a possible one.) The Examiner has failed to provide a teaching that teaches each and every limitation of claim 1.

Amended claim 1 recites “storing said checkpointing data within said checkpoint server wherein said checkpointing data consists of connection information including said corresponding base layer and said unique connection identifier.” Housel does not teach this limitation instead housel teaches a system that provides a cache for storing data transmitted between processing systems. See col. 11, lines 29-61. The data stored in the cache may then be used to restore communications when a connection is lost without having to transmit all of the data a second time. The difference between the Housel system and the system described in amended claim 1 is that Housel teaches storing the data **transmitted** over a connection and the claimed invention is storing data **about** the connection as is shown by the storing of the base layer. Thus, Housel does not teach this limitation of claim 1. Therefore, Applicant respectfully requests that the rejection of claim 1 be removed and amended claim 1 be allowed.

Claim 3 is dependent from amended claim 1 and allowable for at least the same reasons as amended claim 1. Thus, the rejection of claim 3 is moot and must be removed for at least the same reasons as the rejection of amended claim 1.

Amended Claim 9 recites a device that stores instructions of the method recited in amended claim 1. Therefore, amended claim 9 is allowable for at least the same reasons as amended claim 1. Thus, Applicants respectfully request the rejection of claim 9 be removed and amended claim 9 be allowed.

Amended claim 11 is dependent from amended claim 9 and allowable for at least the same reasons as amended claim 9. Thus, the rejection of claim 11 is moot and must be removed for at least the same reasons as amended claim 9.

The Examiner rejects claim 5 under 35 U.S.C. §103(a) as being unpatentable over Housel in view of U.S. Patent Number 6,151,678 issued to Freidman (Freidman). In order to maintain a rejection the Examiner has the burden of providing evidence of prima facie obviousness. See MPEP §2143. See also In Re Vaeck, 947 F.2d 488, 20 USPQ2d

1438 (Fed. Cir. 1991). In order to prove prima facie obviousness, the Examiner must provide evidence in the prior art of a motivation to combine or modify a reference, a reasonable expectation of success, and a teaching of each and every claimed element. Id.

Amended claim 5 recites “storing checkpointing data consisting of data regarding said connection through said router within said checkpoint server.” Housel does not teach this limitation. Instead, Housel teaches a method in which data transmitted between systems is stored with a unique identifier as was stated above with regards to claim 1. Amended claim 5 on the other hand is claiming storing information about a connection in a checkpoint server. The data may then be used to re-establish a connection. Thus, Housel does not teach the data stored as recited in amended claim 5.

Friedman also does not teach the storing of checkpointing consisting of data regarding a connection in a server. Instead, Freidman teaches a method for encrypting data transmitted between nodes and does not discuss the saving of data regarding a connection whatsoever. In fact, the Examiner merely relies on Freidman for providing an encryption of stored data. However, amended claim 5 does not recite any encrypting whatsoever. Instead amended claim 5 recites encoding or inserting a unique identifier into the data about a connection stored by checkpoint server. For these reasons, Friedman does not teach the storing of data regarding a connection as recited in amended claim 5.

Since neither Housel nor Freidman teaches the storing of data regarding a connection, the combination does not teach the storing of the data as recited in amended claim 5. Therefore, applicants respectfully request that the rejection of claim 5 be removed and amended claim 5 be allowed.

Amended claim 6 is dependent upon claim 5. Therefore amended claim 6 is allowable as being dependent upon an allowable claim. The rejection of claim 6 is moot. Thus, Applicants respectfully request the rejection of claim 6 be removed and amended claim 6 be allowed.

Amended claim 7 recites a firewall application that performs the operation of creating a unique identifier as recited in amended claim 5. Thus, amended claim 7 is

allowable for at least the same reasons as amended claim 5. Therefore Applicant respectfully request rejection of claim 7 be removed and amended claim 7 be allowed.

Claim 8 is dependent upon claim 7. Therefore claim 8 is allowable as being dependent upon an allowable claim. The rejection of claim 8 is moot. Thus, Applicants respectfully request the rejection of claim 8 be removed and claim 8 be allowed.

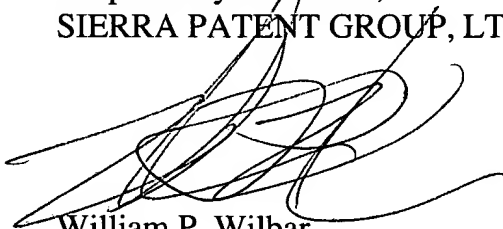
Amended claim 13 recites a device that stores instructions of the method recited in amended claim 5. Therefore, amended claim 13 is allowable for at least the same reasons as amended claim 5. Thus, Applicants respectfully request the rejection of claim 13 be removed and amended claim 13 be allowed.

Amended claim 14 is dependent from amended claim 13 and allowable for at least the same reasons as amended claim 13. Thus, the rejection of claim 14 is moot and must be removed for at least the same reasons as claim 13. Therefore applicant requests amended claim 14 be allowed.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,
SIERRA PATENT GROUP, LTD.

Dated: November 14, 2005

A handwritten signature in black ink, appearing to read 'William P. Wilbar', is written over the printed name and registration number.

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